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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

Reorganization and Revision of Parts 1, 2, 21, and )  
94 of the Rules to Establish a New Part 101 )  
Governing Terrestrial Microwave Fixed Radio )  
Services )

WT Docket No. 94-148

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To: The Commission

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## SUMMARY

BellSouth generally supports the Commission's efforts to streamline, update, and simplify Parts 21 and 94. In addition to the proposals contained in the subject *Notice of Proposed Rulemaking*, however, BellSouth suggests additional revisions to simplify and clarify the proposed rules. Additionally, BellSouth recommends changes to the proposed rules to ensure consistency with *Amendment of Part 21 of the Commission's Rules for the Domestic Public fixed Radio Services*, CC Docket No. 93-2, *Notice of Proposed Rulemaking*, 8 FCC Rcd. 1112 (1993).

Specifically, BellSouth urges the Commission (1) to permit both construction and operation of microwave facilities prior to grant of a facilities-specific authorization; (2) to revise the proposed rules consistent with its proposals to extend the time for consummation of an assignment or transfer to 360 days and to eliminate the requirement that common carriers notify the Commission within 10 days of consummation; (3) to consolidate the common carrier and private operational fixed microwave rules to the maximum extent; (4) to revise the proposed rules to ensure that interested licensees receive critical frequency coordination data; and (5) to clarify certain proposed rules and filing procedures.

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**COMMENTS**

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BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp. (collectively "BellSouth"), by their attorneys, hereby submit comments in response to the Commission's *Notice of Proposed Rule Making*, WT Docket No. 94-148, FCC 94-314 (Dec. 28, 1994), 60 Fed. Reg. 2722 (1994) ("*NPRM*") regarding the proposed simplification of the rules for common carrier and private operational fixed microwave services currently contained in Parts 21 and 94. Although it generally supports the Commission's efforts to streamline, update, and simplify these rules, BellSouth suggests additional revisions to simplify and clarify the rules and to ensure that the proposed rules are consistent with *Amendment of Part 21 of the Commission's Rules for the Domestic Public Fixed Radio Services*, CC Docket No. 93-2, *Notice of Proposed Rulemaking*, 8 FCC Rcd. 1112 (1993) ("*Initial Notice*").

**I. The Commission Should Permit Both Construction and Operation of Fixed Microwave Facilities Prior to Grant of a Facilities-Specific Authorization, Pursuant to Either a BSTA or BellSouth's Blanket License Proposal**

In streamlining common carrier and private operational fixed microwave rules, the Commission should adopt rules which permit construction *and operation* prior to grant of an authorization if certain conditions have been met. In CC Docket No. 93-2, the Commission

proposes to permit Point-to-Point Microwave Radio Service applicants to commence construction, prior to grant of an authorization, provided an FCC Form 494 has been filed which (1) is not mutually exclusive with another application or has a petition to deny filed against it, (2) does not request a waiver, (3) is not returned as unacceptable for filing, (4) has a valid FAA determination (if required), (5) is not a significant environmental impact, and (6) is not within 56.3 kilometers of the U.S. Canadian or U.S.-Mexican border.<sup>1</sup>

In response to this proposal, BellSouth submitted comments urging the Commission to revise the proposed rule to permit both construction *and operation* prior to grant of an authorization. Specifically, BellSouth suggested that the Commission grant blanket authorizations which would permit applicants to commence construction and operation if (1) frequency coordination has been successfully completed, (2) any necessary FAA clearance has been obtained, (3) the proposed facility does not have a significant environmental impact, and (4) the proposed facilities are not within 56.3 kilometers of Canada or Mexico.<sup>2</sup> Many other commenters also supported preauthorization construction.<sup>3</sup>

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<sup>1</sup> *Initial Notice*, 8 FCC Rcd. at 1112-13. BellSouth also notes that this proposal contradicts the proposed Section 101.5(a) which, if adopted, will preclude preauthorization construction by common carrier operators. BellSouth urges the Commission to revise Section 101.5(a) consistent with its previous proposals, comments submitted in the *Initial Notice*, and the creation of the BSTA.

<sup>2</sup> BellSouth Comments, CC Docket No. 93-2, at 3-4 (Mar. 16, 1993).

<sup>3</sup> Local Area Telecommunications, Inc. Comments, CC Docket No. 93-2, at 5-7 (Mar. 16, 1993); Pacific Telesis Group Comments, CC Docket No. 93-2, at 4-5 (Mar. 16, 1993); GTE Service Corporation Comments, CC Docket No. 93-2, at 4 (Mar. 16, 1993); NYNEX Mobile Communications Company Comments, CC Docket No. 93-2, at 6-7 (Mar. 16, 1993); Southwestern Bell Corporation Comments, CC Docket No. 93-2, at 8-14 (Mar. 16, 1993); Sprint Corporation Comments, CC Docket No. 93-2, at 2-4 (Mar. 16, 1993); McCaw Cellular Communications, Inc. Comments, CC Docket No. 93-2, at 15-19 (Mar. 16, 1993).

Apparently in response to comments received in CC Docket No. 93-2, the FCC now permits applicants to commence construction and operation of common carrier point-to-point microwave radio facilities pursuant to Blanket Special Temporary Authority ("BSTA").<sup>4</sup> Under the BSTA, an applicant may construct *and operate* common carrier point-to-point microwave facilities, prior to grant of an authorization, provided:

- an FCC Form 494 has been filed and has appeared on public notice;
- construction and operation are in exact accordance with the previously filed FCC Form 494;
- final action has not been taken on the application;
- the application does not request a waiver and does not propose operation within 56.3 kilometers of any international border or within a radio "Quiet Zone;"
- Frequency coordination has been completed successfully; and
- the facility will have no significant environmental impact.

Given the comments submitted in CC Docket No. 93-2, the subsequent creation of the BSTA, and the need "to allow the microwave industry to operate as efficiently as possible without being hampered by obsolete regulations,"<sup>5</sup> BellSouth respectfully requests that proposed Section 101.5(a) be revised to allow preauthorization construction and operation on the same terms and conditions currently specified in the BSTA.

Alternatively, BellSouth urges the Commission to adopt the blanket licensing system it proposed in CC Docket No. 93-2.<sup>6</sup> BellSouth acknowledges that there are questions as to whether the BSTA is lawful. Adopting BellSouth's alternative approach would eliminate such

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<sup>4</sup> A formal decision in CC Docket No. 93-2 has not been reached. A copy of a BSTA issued to BellSouth is attached.

<sup>5</sup> *NPRM*, 60 Fed. Reg. at 2723.

<sup>6</sup> See BellSouth Comments, CC Docket No. 93-2, at 3-4 (Mar. 16, 1993).

concerns.<sup>7</sup> Under BellSouth's proposal, a blanket authorization would be granted only after an application has been filed and subjected to public notice. This will ensure that the entity is qualified and holds a valid license. Under these circumstances, there is no need to utilize the special temporary authority mechanism, which can be reserved for emergency situations. The blanket license would allow construction and operation to commence only when certain conditions have been met. For example, any construction and operation would have to be successfully frequency coordinated to avoid potential interference. A notification (or such other form as the Commission may specify) would be filed when operation begins, ensuring an up-to-date Commission database of operational facilities.

BellSouth acknowledges that the Commission has made great strides in streamlining the authorization of microwave facilities, and has substantially reduced licensing delays. Nevertheless, the advent of PCS and the continued expansion of cellular systems will result in the need for hundreds of thousands of new microwave paths in the next few years. In the highly competitive wireless world, even a thirty day delay in bringing new facilities on line is too much. Accordingly, BellSouth strongly urges the Commission to adopt a mechanism that eliminates regulatory delays in bringing service to the market.

**II. The Commission Should Extend the Time For Consummation of an Assignment or Transfer to 360 Days and Should Eliminate The Requirement That Common Carriers Notify the Commission Within 10 Days of Consummation**

Although BellSouth supports the Commission's proposal "to eliminate the need for common carriers to notify the Commission within 10 days of consummation" and to extend the

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<sup>7</sup> To the best of BellSouth's knowledge, no BSTA has ever been challenged as unlawful. Thus, such concerns may be only theoretical. Nevertheless, eliminating the opportunity for future challenges, while preserving the benefits of a BSTA-like mechanism, would clearly serve the public interest.

time for consummation of an assignment or transfer to 360 days, the proposed rules are inconsistent with this proposal.<sup>8</sup> Proposed Section 101.15 states that “Upon consummation of an approved assignment, the Commission must be notified by letter of the date [of] consummation within 10 days of its occurrence.”<sup>9</sup> Accordingly, proposed Section 101.15 should be revised to eliminate the 10 day notification requirement and to extend the time for consummation of an assignment or transfer to 360 days.<sup>10</sup> Extending the consummation period in this manner is consistent with the Commission’s intent and will virtually eliminate the numerous extension requests that are filed with the Commission each year.

### **III. Common Carrier and Private Operational Fixed Microwave Rules Should Be Consolidated to the Maximum Extent Possible**

Consistent with the proposed simplification of Parts 21 and 94, BellSouth recommends that the Commission consolidate the common carrier and private operational fixed microwave rules to the maximum extent possible. In this regard, BellSouth notes that the rules regarding frequencies, bandwidth, channel loading, transmitter power, and prior coordination are not grouped together. The proposed rules governing frequencies, for example, are contained in Sections 101.101, 101.605, and 101.703, rather than in one section. Grouping relevant rules in one section will aid the public in determining what requirements must be met under the proposed rules.

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<sup>8</sup> Compare *NPRM*, 60 Fed. Reg. at 2724 with 47 C.F.R. § 101.15 (proposed).

<sup>9</sup> 47 C.F.R. § 101.15 (proposed). The proposed rule also requires that transfers and assignments be consummated within 45 days.

<sup>10</sup> See *Notice*, 60 Fed Reg. at 2724.



#### **IV. The Commission Should Revise The Rules To Ensure That Parties Licensed To Provide Emergency And Temporary Services Receive Critical Frequency Coordination Data**

Unlike many wireless services, most common carrier and private operational fixed microwave services do not provide licensees with protected service areas. Instead, licenses are granted on a path-by-path basis. The only limitation on the number of licensees in a particular geographic area is available spectrum. Because there is no protected geographic service area for most licensees, however, frequency coordination is essential to ensure high quality, uninterrupted service. BellSouth supports the Commission's proposal to incorporate the more stringent coordination and interference rules contained in Parts 21 and 94,<sup>11</sup> but requests that certain modifications be made to the proposed rules to protect existing licensees.

First, because of its extreme importance, the Commission should require frequency coordination for all Part 101 proposals. Thus, the phrase "when required" should be removed from proposed Section 101.103. Further, proposed Section 101.21 should be revised to require the submission of the frequency coordination information described in proposed Section 101.103(d) with every application for a new or modified facility or path. Submission of this information will facilitate accurate and timely frequency coordination, maximize frequency utilization, and establish whether an applicant has coordinated in exact accordance with the application before the Commission.

Proposed Section 101.103 also should be revised to ensure that applicants frequency coordinate with all interested holders of blanket licenses if the new or modified station lies within the area covered by a blanket license. Many licensees have blanket temporary fixed

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<sup>11</sup> See *NPRM*, 60 Fed. Reg. at 2724. See also *Redevelopment of Spectrum to Encourage Innovation in the Use of Telecommunications Technologies*, ET Docket No. 92-9, *Second Report and Order*, 8 FCC Rcd. 6495, 6515-16 (1993).

authorizations to provide temporary or emergency services. It is critical that these licensees receive frequency coordination data.

Furthermore, although most licensees do not have protected service areas, the rules do provide for wide-area licensing of certain frequencies, 38 GHz for example. These licensees may not be interpreted as “users” under the proposed Section 101.103(d)(1), however, if they are not using their licensed frequencies on the portion of their system in the area of the proposal being coordinated. Thus, BellSouth recommends that the term “user” contained in proposed Section 101.103(d) be replaced with the term “licensee.”

Additionally, proposed Section 101.103(d) recognizes that one purpose of coordination is to allow licensees to plan future growth but does not provide a mechanism for licensees interested in expanding into an area to be notified of proposed frequency usage in the area. A utility company, for example, may use microwave frequencies for business purposes in certain portions of the area it serves. Under the proposed coordination procedures, the utility would not receive coordination notices unless it was a “user” of microwave facilities in the area of the proposal being coordinated. Because the utility company serves a large area, however, it may be planning to extend its microwave facilities into the area of the proposal being coordinated. If this company is not given an opportunity to participate in the coordination process, its only recourse may be to file a petition for reconsideration. To minimize such legal disputes, avoid warehousing, and allow businesses to plan systematic extensions of microwave facilities, BellSouth urges the Commission to allow interested licensees an opportunity to be notified of frequency coordination processes in a specified area. Thus, BellSouth proposes that the Commission amend Section 101.103(d) to read:

(d) Frequency coordination. The following frequency usage coordination procedures will apply:

(1) General requirements. Proposed frequency usage must be prior coordinated with existing licensees in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied for channels, or channels coordinated for future growth. Complete coordination data also must be furnished to any licensee who has advised the applicant or its representative of a desire to receive coordination data. Coordination must be completed prior to filing an application for regular authorization. . . .

Further, to ensure that coordination procedures have been followed properly in situations involving temporary authorizations, licensees should be required to include a copy of the frequency coordination and supplemental showing with every notification of temporary fixed operations and request for special temporary authority.<sup>12</sup> Accordingly, BellSouth requests that proposed Section 101.31(d) be amended to include a new subsection to read “(14) Showing of prior coordination.”

#### **V. Proposed Section 101.115 Should Be Modified**

Proposed Section 101.115 requires stations under this part to employ antennas meeting the performance standards for Category A in all congested areas but permits the use of antennas meeting Category B standards in non-congested areas.<sup>13</sup> Proposed Section 101.115 also states that “[t]he Commission may require the replacement, prior to activation of new facilities, at the licensee’s expense, of any antenna or periscope antenna system of a permanent fixed station operating at 2500 MHz or higher that does not meet performance Standard A specified in

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<sup>12</sup> This also would apply to all notifications that facilities have been constructed and placed in operation pursuant to a blanket license.

<sup>13</sup> 47 C.F.R. § 101.115(c)(Note) (proposed).

paragraph (c) of this Section.”<sup>14</sup>

BellSouth suggests that the standards in this section be updated and replaced with the TIA Fixed Point-to-Point Microwave Section’s proposed antenna standards. Additionally, BellSouth urges the Commission to adopt TIA’s proposed definition of congestion and to clarify which licensee is responsible for paying for the replacement of antennas not meeting certain Category A standards. BellSouth also requests that the Commission clarify that “Standard A” refers to Category A standards.

**VI. Section 101.117 Should Define Antenna Polarization and Restrict the Use of Circular Polarization**

The Commission does not propose to limit the type of polarization permitted under Part 101. BellSouth urges the Commission, however, to restrict the use of circular polarization. The unrestricted use of circular polarization will limit access to spectrum unnecessarily because circular polarization has the potential for interfering with both horizontally and vertically polarized systems. Where two licensees could normally use a single channel in the same vicinity by using both horizontal and vertical polarization, only one licensee could use this channel in a given area if it employed circular polarization. Accordingly, the use of circular polarization should be authorized only pursuant to a waiver, when the applicant can show that the use of circular polarization serves the public interest.

**VII. Filing Requirements Should Be Clarified**

While consolidating Parts 21 and 94, BellSouth recommends that the Commission clarify certain filing requirements. Specifically, BellSouth suggests that the rules specify when an FCC Form 494A must be filed. BellSouth has received conflicting information from FCC staff

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<sup>14</sup> 47 C.F.R. § 101.115(d) (proposed).

regarding whether or when FCC Form 494As need to be filed. For example:

- BellSouth has been informed that FCC Form 494As do not need to be filed to certify that a microwave path has been deleted pursuant to Part 21 and that the filing of an FCC Form 494 fulfills a licensee's obligations. It is BellSouth's understanding, however, that other licensees file FCC Form 494As to certify that a path has been taken out of service pursuant to a previously filed FCC Form 494. The Commission should revise Part 101 to make clear that FCC Form 494As do not need to be filed for path deletions.
- On separate occasions, BellSouth has been instructed (1) to file FCC Form 494As simultaneously with FCC Form 494s when notifying the Commission that Section 21.42 modifications have been made; (2) to file FCC Form 494As only after FCC Form 494s, notifying the Commission of Section 21.42 modifications, have been granted; and (3) only to file FCC Form 494s for Section 21.42 modifications. Given the wording of the FCC Form 494A itself, BellSouth requests that the Commission clarify whether FCC Form 494s and Form 494As should be filed simultaneously when notifying the Commission of minor modifications under proposed Section 101.61.<sup>15</sup>

Clarification of these requirements will better enable licensees to comply with Commission rules and regulations.

### CONCLUSION

BellSouth supports the Commission's efforts to streamline Parts 21 and 94 and to allow the microwave industry to operate efficiently. To best achieve these goals, however, BellSouth urges the Commission (1) to permit preauthorization construction and operation of microwave facilities; (2) to revise its rules to allow common carriers one year to consummate assignments and transfers and eliminate the 10 day notification requirement; (3) to consolidate the private and

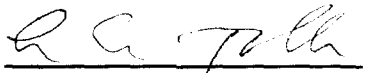
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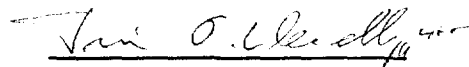
<sup>15</sup> The FCC Form 494A asks if Section 21.42 modifications have been made and, if so, whether an FCC Form 494 is attached.


common carrier microwave rules to the maximum extent; (4) to require frequency coordination for all Part 101 proposals; and (5) to clarify certain rules and filing procedures.

Respectfully submitted,

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